

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
UCA, LLC d/b/a Adelphia Cable Communications)	
)	CSR 5894-E
Petition for Determination of Effective)	
Competition in Various Virginia Communities)	

MEMORANDUM OPINION AND ORDER

Adopted: March 4, 2003

Released: March 6, 2003

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. UCA, LLC d/b/a Adelphia Cable Communications (“Adelphia”) has filed with the Commission a petition pursuant to Section 623(a)(1) of the Communications Act of 1934, as amended (“Communications Act”), and Sections 76.7(a)(1) and 76.905(b)(2) of the Commission’s rules for a determination of effective competition in six Virginia communities (the “Communities”).¹ Adelphia alleges that its cable systems serving the Communities are subject to effective competition and therefore exempt from cable rate regulation because of competing service provided by two direct broadcast satellite (“DBS”) providers, DirecTV, Inc. (“DirecTV”) and DISH Network (“DISH”). Loudoun County filed an opposition to the petition.

II. DISCUSSION

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,² as that term is defined by Section 76.905 of the Commission’s rules.³ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.⁴ Based on the record in this proceeding, Adelphia has met this burden.

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors (“MVPD”) each of which offers comparable video programming to at least 50

¹ See 47 U.S.C. § 543(a)(1); 47 C.F.R. §§ 76.7(a)(1) and 76.905(b)(2). The Communities are Leesburg, Purcellville, Round Hill, Hamilton, Lovettsville, and unincorporated Loudoun County, Virginia. Loudoun County and the Town of Leesburg are certified to regulate basic cable rates.

² 47 C.F.R. § 76.906.

³ 47 C.F.R. § 76.905.

⁴ See 47 C.F.R. §§ 76.906 and 907.

percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds fifteen percent of the households in the franchise area.⁵

4. Turning to the first prong of the competing provider test, DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in a franchise area are made reasonably aware that the service is available.⁶ Adelphia has provided evidence of the advertising of DBS service in the news media serving the Communities.⁷ With respect to the issue of program comparability, we find that the programming of the DBS providers satisfies the Commission's program comparability criterion because the DBS providers offer at least 12 channels of video programming, including at least one non-broadcast channel.⁸ We find that Adelphia has demonstrated that the Communities are served by at least two unaffiliated MVPDs, namely the two DBS providers, each of which offers comparable video programming to at least 50 percent of the households in the Communities. Adelphia also demonstrated that the two DBS providers are physically able to offer MVPD service to subscribers in the Communities, that there exists no regulatory, technical, or other impediments to households within the Communities taking the services of the DBS providers, and that potential subscribers in the Communities have been made reasonably aware of the MVPD services of DirectTV and DISH. Therefore, the first prong of the competing provider test is satisfied for the Communities served by Adelphia.

5. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Adelphia sought to determine the competing provider penetration of its franchise area by purchasing a report from SkyTrends that identified the number of subscribers attributable to the DBS providers within the Communities on a five-digit zip code basis.⁹ Loudoun County filed an opposition arguing that granting the petition would not be in the public interest given Adelphia's current "precarious financial" condition and its possible sale.¹⁰ Loudoun County also questions Adelphia's subscriber figures based upon news reports in which Adelphia admits that it inflated its cable subscriber base.¹¹ Based on these arguments, Loudoun County alleges that the petition is not ripe for resolution by the Commission. The Communications Act does not extend to the Commission discretion to deny or delay an effective competition petition properly before it based upon the financial condition or possibility of the petitioner's sale. Accordingly, we cannot deny or defer consideration of Adelphia's petition on such grounds. With regard to Adelphia's subscriber numbers, Loudoun County has offered no evidence that the subscriber information Adelphia has provided in connection with this petition is incorrect or inflated. We also note that Adelphia's petition is submitted under sworn declaration and Adelphia has a continuing obligation to

⁵ 47 U.S.C. §543(1)(1)(B); *see also* 47 C.F.R. §76.905(b)(2).

⁶ *See MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

⁷ *See* Adelphia Petition at 4 and Exhibit A.

⁸ *See* 47 C.F.R. §76.905(g); *see also* Adelphia Petition at 4-5 and Exhibits B, C, and D.

⁹ Adelphia Petition at 6-9 and Exhibit F.

¹⁰ Loudoun County Opposition at 5. Loudoun County also argued that the Commission should defer action on Adelphia's petition because the, then pending, merger petition of DirecTV and Dish would potentially reduce to one MVPD the number of MVPD competitors offering comparable service to at least 50 percent of the households in unincorporated Loudoun County. *Id.* at 3-4. We need not address this argument because of the Commission's subsequent disposition of the merger petition.

¹¹ *Id.* at 5.

correct any errors contained in its petition. Further, the finding of effective competition herein is based upon the competitive penetration of Adelphia's DBS competitors, rather than Adelphia's subscriber information, which only serves to indicate that Adelphia is the largest MVPD in each of the Communities. In this regard, we note that Adelphia's petition contained a copy of the SkyTrends report purchased by Adelphia, which included DBS subscriber information for each zip code associated with the Communities. We find this to be sufficiently reliable for purposes of our effective competition determination.

6. Adelphia asserts that it is the largest MVPD in the Communities because Adelphia's subscribership exceeds the aggregate DBS subscribership for those franchise areas.¹² Based upon the aggregate DBS subscriber penetration levels as reflected in Attachment A, calculated using 2000 Census household data,¹³ we find that Adelphia has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the Communities. Therefore, the second prong of the competing provider test is satisfied. Based on the foregoing, we concluded that Adelphia has submitted sufficient evidence demonstrating that its cable systems serving the Communities set forth on Attachment A are subject to effective competition.

III. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition filed in the captioned proceeding by UCA, LLC d/b/a Adelphia Cable Communications **IS GRANTED**.

8. **IT IS FURTHER ORDERED** that the certifications of Loudoun County and the Town of Leesburg, Virginia to regulate basic cable rates **ARE REVOKED**.

9. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.¹⁴

FEDERAL COMMUNICATIONS COMMISSION

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¹² Adelphia Petition at 6-9 and Exhibit E.

¹³ *Id.* and Exhibit G.

¹⁴ 47 C.F.R. §0.283.

Attachment A

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Communities	CUIDS	CPR*	2000 Census Households ⁺	Estimated DBS Subscribers ⁺	Adelphia Subscribers ⁺
Loudoun County	VA0332	44.7%	47,254	21,116	27,895
Town of Leesburg	VA0255	31.4%	10,325	3,241	6,854
Town of Purcellville	VA05676	33.6%	1,253	421	804
Town of Round Hill	VA0569	21.4%	173	37	146
Town of Hamilton	VA0570	30.1%	216	65	167
Town of Lovettsville	VA 0571	49.4%	318	157	190

* CPR = Percent of competitive DBS penetration rate.

⁺ See Adelphia Petition at 6-9 and Exhibits G, F, and E.